

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Frederick James Fillingham #17031-053,)	C/A No. 8:15-1623-HMH-JDA
)	
Plaintiff,)	
)	REPORT AND RECOMMENDATION
vs.)	
)	
U.S. Department of Justice (DOJ),)	
United States Attorneys (USA),)	
Office of Information Policy (OIP),)	
United States Parole Commission (USPC),)	
)	
Defendants.)	
)	

This matter is before the Court because Plaintiff has not responded to this Court's January 28, 2016, Order directing him—for the third time—to bring this case into proper form. [Doc. 54.] As explained below, it is recommended that this case be dismissed without prejudice.

The history of this case is as follows. This action was transferred to this Court on March 16, 2015, by the United States District Court for the Eastern District of Texas.¹ [Doc.8.] Plaintiff is a federal prisoner, and he filed this civil action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. [*Id.*] This action was not in proper form. Thus, on April 17, 2015, this Court entered an Order to give Plaintiff an opportunity to provide the necessary information and paperwork to bring the case into proper form for evaluation and possible service of process. [Doc. 17.] The time permitted under the initial Order passed, but Plaintiff did not submit the required information and paperwork.

Instead, Plaintiff filed a motion for assistance of counsel. [Doc. 19.] By Order dated May 18, 2015, this Court denied Plaintiff's motion for appointment of counsel and again

¹Plaintiff filed this action in the Texas district court on or about December 14, 2012.

directed Plaintiff to bring this action into proper form. [Doc. 21.] Plaintiff appealed that Order to the District Judge, and on June 10, 2015, the Honorable Senior United States District Judge Henry M. Herlong, Jr., affirmed the May 18, 2015, decision. [Doc. 28.]

Plaintiff appealed the June 10, 2015, Order to the United States Court of Appeals for the Fourth Circuit, and on January 26, 2016, it dismissed the appeal for failure to prosecute. [Doc. 50.]

Out of an abundance of caution, this Court entered a third Order on January 28, 2016, directing Plaintiff to bring this action into proper form. [Doc. 54.] Plaintiff was warned that if he failed to do so this action may be dismissed for failure to prosecute and to comply with an order of this Court. [*Id.*] Plaintiff did not respond to the January 28, 2016, Order, and the time for response has lapsed. Plaintiff has failed to prosecute this case and has failed to comply with an order of this Court. Thus, it is recommended that this case should be **dismissed without prejudice** pursuant to Rule 41 of the Federal Rules of Civil Procedure. See *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962). Plaintiff's attention is directed to the important notice on the next page.

March 2, 2016
Greenville, South Carolina

S/Jacquelyn D. Austin
United States Magistrate Judge

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).